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## HOUSE BILL NO. 1487

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on Commerce and Labor  
on January 31, 2008)

(Patron Prior to Substitute—Delegate Suit)

A BILL to amend and reenact §§ 6.1-409, 6.1-414, 6.1-425, 6.1-428, 19.2-389, 30-261, and 38.2-220 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 6.1-423.1 and 6.1-423.2, relating to the Mortgage Lender and Broker Act; the owner-occupancy requirement in the definition of a mortgage loan; failure to pay appraisal fee as grounds for license suspension or revocation; background investigations; employee training; the power of the State Corporation Commission to enforce certain laws; and the duties of the Virginia Housing Commission; penalties; all pertaining to home ownership protection.

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-409, 6.1-414, 6.1-425, 6.1-428, 19.2-389, 30-261, and 38.2-220 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 6.1-423.1 and 6.1-423.2, as follows:

§ 6.1-409. Definitions.

As used in this chapter, the following words and terms shall have the following meanings unless the context requires a different meaning:

"Commission" means the State Corporation Commission.

"Commissioner" means the Commissioner of the Bureau of Financial Institutions.

"Mortgage broker" means any person who directly or indirectly negotiates, places or finds mortgage loans for others, or offers to negotiate, place or find mortgage loans for others. Any licensed mortgage lender that, pursuant to an executed originating agreement with the Virginia Housing Development Authority, acts or offers to act as an originating agent of the Virginia Housing Development Authority in connection with a mortgage loan shall not be deemed to be acting as a mortgage broker with respect to such mortgage loan but shall be deemed to be acting as a mortgage lender with respect to such mortgage loan, notwithstanding that the Virginia Housing Development Authority is or would be the payee on the note evidencing such mortgage loan and that the Virginia Housing Development Authority provides or would provide the funding of such mortgage loan prior to or at the settlement thereof.

"Mortgage lender" means any person who directly or indirectly originates or makes mortgage loans.

"Mortgage loan" means a loan made to an individual, the proceeds of which are to be used primarily for personal, family or household purposes, which loan is secured by a mortgage or deed of trust upon any interest in one- to four-family residential owner-occupied property located in the Commonwealth, regardless of where made, including the renewal or refinancing of any such loan, but excluding (i) loans or extensions of credit to buyers of real property for any part of the purchase price of such property by persons selling such property owned by them, (ii) loans to persons related to the lender by blood or marriage, and (iii) loans to persons who are bona fide employees of the lender. "Mortgage loan" shall not include any loan that is made primarily for a business, secured by a mortgage or deed of trust upon any interest in a more than four-family residential property or property used for a commercial, or agricultural purpose.

"Person" means any individual, firm, corporation, partnership, association, trust, or legal or commercial entity or group of individuals however organized.

"Principal" means any person who, directly or indirectly, owns or controls (i) ten percent or more of the outstanding stock of a stock corporation or (ii) a ten percent or greater interest in a nonstock corporation or a limited liability company.

"Residential property" means improved real property used or occupied, or intended to be used or occupied, for residential purposes.

§ 6.1-414. Investigation of applications; criminal background checks.

A. The Commissioner may make such investigations as he deems necessary to determine if the applicant has complied with all applicable provisions of law and regulations promulgated thereunder.

B. For the purpose of investigating individuals who are members, senior officers, directors, and principals of an applicant, such persons shall consent to a federal and state criminal history records check and submit to fingerprinting by a local or state law-enforcement agency. Each member, senior officer, director, and principal shall pay for the cost of such fingerprinting and criminal records check. Upon receipt of the records check fees along with two complete sets of such individuals' fingerprints and their personal descriptive information, the Commissioner or his designee shall forward these items to the Department of State Police Central Criminal Records Exchange. The Central Criminal Records Exchange shall forward one set of each individual's fingerprints and personal descriptive information to

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60 *the Federal Bureau of Investigation for the purpose of obtaining national criminal history record*  
61 *information regarding such individuals. The Central Criminal Records Exchange shall retain the other*  
62 *set of fingerprints and promptly conduct a search of its own records and any records to which it has*  
63 *access. The Central Criminal Records Exchange shall forward to the Commissioner of Financial*  
64 *Institutions or his designee, who shall be an employee of the Commission, the results of the records*  
65 *search from the Central Criminal Records Exchange and the Federal Bureau of Investigation.*

66 *C. If any member, senior officer, director, or principal of an applicant fails to submit his*  
67 *fingerprints, personal descriptive information, or records check fees to the Commissioner or his designee*  
68 *in accordance with subsection B, the application to engage in business as a mortgage lender or*  
69 *mortgage broker shall be denied.*

70 *§ 6.1-423.1. Employee background checks.*

71 *A licensee shall not employ an individual who may have access to or process personal identifying or*  
72 *financial information from a member of the public unless the licensee has found, upon completion of an*  
73 *investigation of the individual, including a criminal records check as provided in subdivision A 37 of*  
74 *§ 19.2-389, that the individual has not been convicted in any court of any felony, or any misdemeanor*  
75 *involving fraud, misrepresentation or deceit, under the laws of any state or of the United States. The*  
76 *licensee may seek approval from the Commission to permit an exception from such prohibition, by filing*  
77 *a petition pursuant to the Commission's Rules of Practice and Procedure. The Commission shall adopt*  
78 *regulations specifying the requirements for a licensee's investigation of an individual pursuant to this*  
79 *section.*

80 *§ 6.1-423.2. Employee training programs.*

81 *Each licensee shall ensure that employees are properly trained in applicable state and federal laws*  
82 *and regulations applicable to mortgage lending. The Commission shall adopt regulations prescribing the*  
83 *scope of such proper employee training.*

84 *§ 6.1-425. Suspension or revocation of license.*

85 *A. The Commission may suspend or revoke any lender's or broker's license issued under this chapter*  
86 *upon any of the following grounds:*

87 *1. Any ground for denial of a license under this chapter;*

88 *2. Any violation of the provisions of this chapter or regulations promulgated by the Commission*  
89 *pursuant thereto, or a violation of any other law or regulation applicable to the conduct of the lender's*  
90 *or broker's business;*

91 *3. A course of conduct consisting of the failure to perform written agreements with borrowers;*

92 *4. Failure to account for funds received or disbursed to the satisfaction of the person supplying or*  
93 *receiving such funds;*

94 *5. Failure to pay when due reasonable fees to a licensed appraiser for appraisal services that are (i)*  
95 *requested from the appraiser in writing by the mortgage broker or mortgage lender or an employee of*  
96 *the mortgage broker or mortgage lender and (ii) performed by the appraiser in connection with the*  
97 *origination or closing of a mortgage loan for a customer of the mortgage broker or mortgage lender.*

98 *6. Failure to disburse funds in accordance with any agreement connected with, and promptly upon*  
99 *closing of, a mortgage loan, taking into account any applicable right of rescission;*

100 *7. Conviction of a felony or misdemeanor involving fraud, misrepresentation or deceit;*

101 *8. Entry of a judgment against such lender or broker involving fraud, misrepresentation or deceit;*

102 *9. Entry of a federal or state administrative order against such lender or broker for violation of any*  
103 *law or any regulation applicable to the conduct of his business;*

104 *10. Refusal to permit an investigation or examination by the Commission;*

105 *11. Failure to pay any fee or assessment imposed by this chapter; or*

106 *12. Failure to comply with any order of the Commission.*

107 *B. For the purposes of this section, acts of any officer, director, member, partner or principal shall be*  
108 *deemed acts of the lender or broker.*

109 *§ 6.1-428. Fines for violations.*

110 *In addition to the authority conferred under §§ 6.1-425 and 6.1-426, the Commission may impose a*  
111 *fine or penalty not exceeding \$2,500 upon any lender or broker required to be licensed under this*  
112 *chapter who it determines, in proceedings commenced in accordance with the Rules of Practice and*  
113 *Procedure of the Commission, has violated any of the provisions of this chapter, or any other law or*  
114 *regulation applicable to the conduct of the lender's or broker's business. For the purposes of this*  
115 *section, each separate violation shall be subject to the fine or penalty herein prescribed, and each day*  
116 *after the date of notification, excluding Sundays and holidays, as prescribed in § 2.2-3300, that an*  
117 *unlicensed person engages in the business or holds himself out to the general public as a mortgage*  
118 *lender or mortgage broker shall constitute a separate violation.*

119 *§ 19.2-389. Dissemination of criminal history record information.*

120 *A. Criminal history record information shall be disseminated, whether directly or through an*  
121 *intermediary, only to:*

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth for the conduct of investigations of applicants for public employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall not be further disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company or volunteer rescue squad; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes approved by family day-care systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719 through 63.2-1721, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a

183 report of arrest has been made pursuant to § 19.2-83.1;

184 14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery  
185 Law (§ 58.1-4000 et seq.), and the Department of Charitable Gaming for the conduct of investigations as  
186 set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

187 15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations  
188 of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital  
189 pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to  
190 the limitations set out in subsection E;

191 16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers  
192 for the conduct of investigations of applicants for compensated employment in licensed homes for adults  
193 pursuant to § 63.2-1720, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed  
194 adult day-care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

195 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in  
196 § 4.1-103.1;

197 18. The State Board of Elections and authorized officers and employees thereof in the course of  
198 conducting necessary investigations with respect to registered voters, limited to any record of felony  
199 convictions;

200 19. The Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse  
201 Services for those individuals who are committed to the custody of the Commissioner pursuant to  
202 §§ 19.2-169.2, 19.2-169.6, 19.2-176, 19.2-177.1, 19.2-182.2, 19.2-182.3, 19.2-182.8, and 19.2-182.9 for  
203 the purpose of placement, evaluation, and treatment planning;

204 20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety  
205 Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first  
206 offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

207 21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the  
208 Department of Education, or the Department of Mental Health, Mental Retardation and Substance Abuse  
209 Services for the purpose of determining applicants' fitness for employment or for providing volunteer or  
210 contractual services;

211 22. The Department of Mental Health, Mental Retardation and Substance Abuse Services and  
212 facilities operated by the Department for the purpose of determining an individual's fitness for  
213 employment pursuant to departmental instructions;

214 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or religious  
215 elementary or secondary schools which are accredited by a statewide accrediting organization  
216 recognized, prior to January 1, 1996, by the State Board of Education or a private organization  
217 coordinating such records information on behalf of such governing boards or administrators pursuant to  
218 a written agreement with the Department of State Police;

219 24. Public and nonprofit private colleges and universities for the purpose of screening individuals  
220 who are offered or accept employment;

221 25. Executive directors of community services boards or the personnel director serving the  
222 community services board for the purpose of determining an individual's fitness for employment  
223 pursuant to §§ 37.2-506 and 37.2-607;

224 26. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of  
225 determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

226 27. The Commissioner of the Department of Social Services for the purpose of locating persons who  
227 owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided  
228 that only the name, address, demographics and social security number of the data subject shall be  
229 released;

230 28. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of  
231 Chapter 4 of Title 37.2 by the Department of Mental Health, Mental Retardation and Substance Abuse  
232 Services for the purpose of determining if any applicant who accepts employment in any direct  
233 consumer care position has been convicted of a crime that affects their fitness to have responsibility for  
234 the safety and well-being of persons with mental illness, mental retardation and substance abuse pursuant  
235 to §§ 37.2-416, 37.2-506, and 37.2-607;

236 29. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants  
237 for a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.)  
238 and 21 (§ 46.2-2100 et seq.) of Title 46.2;

239 30. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates  
240 for the purpose of determining if any person being considered for election to any judgeship has been  
241 convicted of a crime;

242 31. Heads of state agencies in which positions have been identified as sensitive for the purpose of  
243 determining an individual's fitness for employment in positions designated as sensitive under Department  
244 of Human Resource Management policies developed pursuant to § 2.2-1201.1. Dissemination of criminal

history record information to the agencies shall be limited to those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures;

32. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.);

33. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;

34. Any employer of individuals whose employment requires that they enter the homes of others, for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

35. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

36. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services; and

*37. The State Corporation Commission for the purpose of investigating individuals who are members, senior officers, directors, and principals of an applicant for licensure as a mortgage lender or mortgage broker, or a licensed mortgage lender or mortgage broker for the purpose of investigating individuals applying for a position of employment in which the individual may have access to or process personal identifying or financial information from a member of the public, pursuant to Chapter 16 (§ 6.1-408 et seq.) of Title 6.1. Notwithstanding any other provision of law, if an application for a mortgage lender or mortgage broker license is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to § 6.1-414, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee; and*

38. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision 15 of subsection A shall be limited to the convictions on file with

306 the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02 and 32.1-162.9:1.

307 F. Criminal history information provided to licensed assisted living facilities, licensed district homes  
308 for adults, and licensed adult day-care centers pursuant to subdivision 16 of subsection A shall be  
309 limited to the convictions on file with the Exchange for any offense specified in § 63.1-189.1 or  
310 63.2-1720.

311 G. Criminal history information provided to public agencies pursuant to subdivision 35 of subsection  
312 A shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1719.

313 H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal  
314 Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the  
315 Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in  
316 the request to the employer or prospective employer making the request; provided that the person on  
317 whom the data is being obtained has consented in writing to the making of such request and has  
318 presented a photo-identification to the employer or prospective employer. In the event no conviction data  
319 is maintained on the person named in the request, the requesting employer or prospective employer shall  
320 be furnished at his cost a certification to that effect. The criminal history record search shall be  
321 conducted on forms provided by the Exchange.

322 § 30-261. Powers and duties.

323 A. The Commission shall have the following powers and duties:

324 1. Undertake studies, gather information and data, and pursue such other activities as may be  
325 desirable to accomplish its purposes as set forth in § 30-257; ~~and~~

326 2. Report annually on its activities during the preceding year and include a discussion of studies  
327 made and recommendations for administrative or legislative action; *and*

328 3. *Review newly enacted federal legislation pertaining to mortgage lending and brokering and*  
329 *determine if such federal legislation necessitates amendments to the laws of the Commonwealth.*

330 B. The chairman shall submit to the General Assembly and the Governor an annual executive  
331 summary of the interim activity and work of the Commission no later than the first day of each regular  
332 session of the General Assembly. The executive summary shall be submitted as provided in the  
333 procedures of the Division of Legislative Automated Systems for the processing of legislative documents  
334 and reports and shall be posted on the General Assembly's website.

335 § 38.2-220. Injunctions.

336 A. The Commission shall have the jurisdiction and powers of a court of equity to issue temporary  
337 and permanent injunctions restraining acts which violate or attempt to violate provisions of this title and  
338 to enforce the injunctions by civil penalty or imprisonment.

339 B. *The Attorney General shall be authorized to bring an action to enjoin any violation of § 6, 8, or 9*  
340 *of the Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. § 2601 et seq., to the extent*  
341 *authorized by § 16 of RESPA, 12 U.S.C. § 2614.*